

AMERICAN ARBITRATION ASSOCIATION
230 SOUTH BROAD STREET, 12TH FLOOR
PHILADELPHIA, PA 19102-4106

Case No. 14 390 01528 12

In the Matter of Arbitration Between
CITY OF PHILADELPHIA,

Employer,

and

FRATERNAL ORDER OF
POLICE, LODGE #5,

Union.

OPINION
AND
AWARD

ARBITRATOR:

Robert E. Light, mutually chosen
by the parties pursuant to the
rules and regulations of the
American Arbitration Association

HEARING:

September 15, 2014 in Philadelphia, PA.

APPEARANCES:

For the City

Cara Leheny, Esq.

Cpt. Gregory Malkowski

For the FOP

Marc Gelman, Esq. (Jennings Sigmond, PC)

John McGrody, Union Representative

Eyleen Archie, Grievant

ISSUE:

Was there just cause for the five day suspension
imposed on Officer Eyleen Archie? If not, what
shall be the remedy?

BACKGROUND

A hearing in this matter was held on September 15, 2014, at the offices of the American Arbitration Association, Philadelphia, Pennsylvania, with both sides present and duly represented by counsel and where both parties were afforded full and complete opportunity to offer evidence and argument in support of their respective contentions. In lieu of filing post-hearing briefs, both counsel made oral summations, after which time the hearing was declared closed.

The City of Philadelphia (hereinafter the "City" or the "Employer") and Fraternal Order of Police, Lodge #5 (hereinafter the "Union" or "FOP") are signatories to a current collective bargaining agreement. In accordance therewith, a grievance was filed by the FOP on behalf of Police Officer Eyleen Archie, which grievance dealt with a five day disciplinary suspension imposed upon her regarding an incident which occurred on May 23, 2011. The matter was grieved, proceeded through the grievance procedure and when there was no resolution it was submitted to the undersigned for final and binding resolution.

FACTS

The facts indicate that on Monday, May 23, 2011 the grievant was working the overtime PLCB Detail on the 11:00 a.m. – 9:30 p.m. tour of duty. She stopped at her home, carrying some food as she entered it. A neighbor by the name of J [REDACTED] G [REDACTED] testified that she noticed that the grievant parked her police vehicle in front of her home in a way where cars behind that vehicle could not pass. (Parenthetically, it was described that the street in question was a narrow one way street). Ms. G [REDACTED] testified that, after waiting a few minutes, she began to blow her horn in order to have the grievant move her car. Thereafter, a verbal altercation occurred between Ms. G [REDACTED] and the grievant with respect to Ms. G [REDACTED] allegation that the

grievant was blocking the street and that she and other cars could not get by. According to Ms. G [REDACTED] the grievant exited her home and said to Ms. G [REDACTED], "Who the fuck do you think you are", wherein Ms. G [REDACTED] told her to move the car. Thereafter, according to Ms. G [REDACTED] the grievant asked her for her license and registration with Ms. G [REDACTED] refusing to give them to her. Ms. G [REDACTED] further testified that the grievant's finger was in her face and that, at that time, the grievant called for "backup", with two Officers later arriving. Ms. G [REDACTED] filed a Citizen's Complaint against the grievant and, based upon the incident, the grievant received a five day suspension.

Officer Archie testified in her own behalf at the hearing. She stated that Ms. G [REDACTED] said to her, "move the fucking car" and that "you think you are the fucking police and can fucking do as you please." The grievant then asked for Ms. G [REDACTED] ID, and as noted above, Ms. G [REDACTED] refusing to give it to her. The grievant testified she then called for backup and Officers later arrived. According to the grievant, she never used profanity nor did she park her car in an illegal fashion.

POSTION OF THE CITY

The City takes the position that it properly gave the grievant a five day suspension for her actions on the day in question. Specifically, it maintains that the grievant abused her authority for what really was a petty reason. It maintains that the version given by the citizen is the more credible and that all that is involved here is the lowest level of discipline namely a five day suspension which, it maintains, was properly given to the grievant. It points out that Ms. G [REDACTED] had "no axe to grind" and that all she did was to ask a Police Officer to move a car which was blocking her street. The City asks that the grievance be denied and that the five day disciplinary suspension be affirmed.

POSITION OF THE FOP

The FOP, on the other hand, takes the position that there has been no abuse of authority here which really has never been defined. It argues that the grievant had a perfectly legitimate right to ask for the citizen's ID and that the grievant is the more credible. It asks that the suspension be expunged and that the grievant be made whole.

DISCUSSION

The arbitrator has carefully weighed all of the evidence in the case including the testimony of the witnesses at the hearing, the arguments of respective counsel as set forth at the hearing, the contract and exhibits prior to reaching his decision. Initially, the arbitrator points out that what is involved here is a credibility issue with this case really involving a "she said; she said" situation. As this arbitrator has said on many occasions, assessing credibility is no easy task for arbitrators to perform and where, as here, the testimony is in such direct conflict, that task becomes all the more difficult. Of necessity however, the arbitrator utilized those tests in order to ascertain the credibility of the witnesses as they testified namely, the demeanor of the witnesses as they testified, the reasonableness of the stories that were told, the existence of conflicts with other assertions of fact, and the simple plausibility of the grievant's story when weighed against ordinary experience and common sense.

As counsel for the Union points out, abuse of authority is really not defined. However, based upon the facts presented, it is apparent to this arbitrator that the grievant acted in an arrogant manner and could have, as a professional, calmed down what later became a confrontation. That is to say, I do believe that the grievant was upset at being "called out" regarding how she had left her vehicle prior to going into her home. Had she properly parked instead of leaving her vehicle in the manner in which she did the entire episode obviously would

not have occurred and the vehicle investigation would not have occurred which required the grievant asking for backup. In short, based upon all of the evidence in the case, it is the opinion of this arbitrator that the grievant acted in an improper and unprofessional manner and that the City's action in imposing a five day suspension upon the grievant was proper. Therefore, the grievance is denied.

Therefore, the undersigned having duly heard all of the proofs and allegations of the parties to this proceeding makes the following award:

AWARD

The grievance is denied. The City properly imposed a five day disciplinary suspension against Officer Eyleen Archie.




ROBERT E. LIGHT, ARBITRATOR

AFFIRMATION

I, Robert E. Light, do hereby affirm upon my oath as Arbitrator that I am the individual described in and who executed this instrument, which is my Opinion and Award.

Dated: September 24, 2014



Robert E. Light, Arbitrator